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U.S. Citizenship  
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Services



FILE:

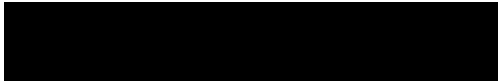


Office: VERMONT SERVICE CENTER

Date: MAY 24 2004

IN RE:

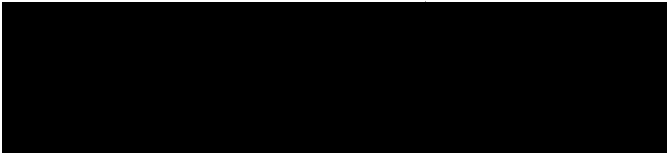
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration  
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant was ineligible for TPS because he had been convicted of a felony offense committed in the United States. The director, therefore, denied the application.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) erred in denying the TPS application because there is an exception to the definition for felony, pursuant to 8 C.F.R. § 244.1. He states that "indecent exposure" is defined in Maryland as a misdemeanor, and the sentence actually imposed on the applicant was less than one year; therefore, the applicant's conviction was not a felony but, instead, a misdemeanor. Counsel further states that the court is considering modifying the applicant's sentence. He submits a copy of a Supplement to Motion for Reconsideration filed with the District Court of Maryland, requesting that the applicant's sentence in the above case be modified.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
  - (2) During any subsequent extension of such designation if at the time of the initial registration period:
    - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
    - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
    - (iii) The applicant is a parolee or has a pending request for reparole; or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General [now the Secretary of the Department of Homeland Security (the Secretary)] finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

*Felony* means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, **except when the offense is defined by the State as a misdemeanor, and the sentence actually imposed is one year or less regardless of the term such alien actually served.** Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor. (Emphasis added.)

*Misdemeanor* means a crime committed in the United States, either:

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.

The record reflects that on March 2, 2001, in the District Court of Maryland, Anne Arundel County, Case No. 5A00083417, the applicant was convicted of indecent exposure. He was sentenced to imprisonment for a period of 18 months, 17 months suspended, to serve 30 days, and was placed on probation for a period of 3 years.

Maryland Criminal Law, section 11-107 states, in part:

A person convicted of indecent exposure is guilty of a misdemeanor and is subject to imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

Counsel's claim on appeal that the applicant qualifies for the exception, as defined in 8 C.F.R. § 244.1, is not persuasive. Although the State of Maryland defines indecent exposure as a misdemeanor, and that the applicant, in this case, served approximately 30 days in jail, the record reflects that the sentence actually imposed on the applicant was 18 months in prison. The applicant, therefore, does not qualify for the exception as provided in 8 C.F.R. § 244.1. Further, the filing of the Supplement to Motion for Reconsideration with the court is not sufficient to establish that the applicant's sentence actually imposed was one year or less.

Accordingly, the applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his felony conviction.

The burden of proof is upon the applicant to establish that he meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden. The appeal will be dismissed.

**ORDER:** The appeal is dismissed.